IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No. 1573 of 2006
Date of decision : 2-11-2006

Executive Engineer, Provincial Division No.II,
PWD (B&R) Branch, Sonepat.

… Petitioner

Versus

Jai Bhagwan and another … Respondents

CORAM:- HON'BLE MR. JUSTICE J.S.NARANG
HON'BLE MR. JUSTICE ARVIND KUMAR

Present: Mr. Ajay Chaudhary, Addl. AG Haryana,
for the petitioner

Mr. Vivek Singla Adocate,
for respondent No.1

…

ARVIND KUMAR J:

Petitioner-department on 1.5.1997 engaged respondent No.1-workman to work on Muster Rolls on daily wage basis. His services were terminated with effect from 1.4.1998. Feeling aggrieved with his termination, the workman served a demand notice upon the department seeking reinstatement with continuity of services and full back-wages. On failure of the reconciliation proceedings, the matter was referred to the Labour Court, Panipat, for adjudication. The workman did not file claim statement and the demand notice was treated as claim statement on his behalf. Before the Labour Court, the workman took the plea that his services were terminated illegally without any notice or payment of any

retrenchment compensation in lieu thereof. On the contrary, the stand of the department was that the workman had not worked for 240 days in a calendar year preceding the date of his termination. It was pleaded that since the workman left the job of his own and therefore, was not entitled to the relief prayed for.

In support of their respective case, evidence was led by the parties.

The learned Labour Court on appreciation of the evidence so led by the parties, counted Sundays falling during the relevant year to conclude that he had worked for more than 240 days in the preceding 12 months from the date of his termination. Accordingly, vide award dated 23.8.2005 (Annexure P-5) the Labour Court held that the services of the workman were terminated illegally in violation of Section 25-F of the Act, thereby ordering his reinstatement with continuity of service and full back-wages from the date of demand notice i.e. 28.5.1997. Hence, the present writ petition under Articles 226/227 of the Constitution of India, by the petitioner-department, seeking quashing of award dated 23.8.2005, Annexure P/5.

Upon notice of motion, respondent No.1- workman has filed written statement justifying the impugned award, besides praying for dismissal of the writ petition.

We have heard the learned counsel for the parties.

The only point involved in the writ petition is whether Sundays and other holidays are to be included while calculating 240 days in regard to a workman under the Act ibid. It has been held by the Hon'ble Supreme Court in The Workmen of American Express International Banking Corporation v. The Management of American Express International Banking Corporation, AIR 1986 SC-458, that the expression "actually worked under the employer" must necessarily comprehend all those days during which the workman was in the employment of the employer and for which he had been paid wages either under express or implied contract of service. The workman is thus, necessarily to have worked on those days and paid accordingly. In the instant case, a bare perusal of the impugned award coupled with Annexure P-1, the details of the attendance, shows that the respondent-workman in fact had worked for

220 days during the period of 12 months preceding the date of termination. The learned Labour Court has observed that the workman had also worked on some Sundays and holidays constituting 13 days and has thus, added it in 220 days, thereby making it a total of 233 days while counting 240 days as provided under the Act ibid. The learned Labour Court has also added 48 Sundays during the preceding 11 months while coming to the conclusion that in this way the workman had worked for more than 240 days in the preceding 12 months from the date of his termination i.e. 1.4.1998. The learned Labour Court has fallen into error in adding the said 48 Sundays without there being any evidence on record that the respondent-workman had worked on those days and was paid accordingly. Thus, those 48 Sundays could not be added in view of the ratio laid down in The Workmen of American Express International Banking Corporation's case(supra).

Learned counsel for the respondent-workman has not been able to convince us to take any contrary view. Since the respondent-workman had completed 230 days and not 240 days, he is not entitled to any protection provided under Section 25-F of the Act.

In view of the discussion above, the writ petition is allowed and the impugned award, Annexure P-5, set aside. As a consequence thereof, the claim statement of the workman stands dismissed. No costs.

(ARVIND KUMAR)
JUDGE

(J. S. NARANG)
JUDGE

November 2, 2006
JS